

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**The Minutes**

**October 15, 2001**

At 9:30 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Raye, Acting Presiding Justice; Callahan, Associate Justice; Kolkey, Associate Justice; and Rios, Bailiff. Calendar Called.

**C034104      PARKE PLACE AT GOLD RIVER HOMEOWNERS ASSOCIATION v. ROBINO et al.**

Cause called. Heidi A. Hunter argued for appellants. James O. Devereaux argued for respondent. Cause submitted.

At 10:05 a.m., the court recessed. At 10:10 a.m., the court reconvened with Acting Presiding Justice Davis, Associate Justice Callahan and Associate Justice Kolkey.

**C032230      TADINA et al. v. BOWLES et al.**

Cause called. Richard T. Bowels argued for appellants. Robert M. Harding argued for respondents. Cause submitted.

At 10:44 a.m., the court recessed. At 10:47 a.m., the court reconvened with Presiding Justice Scotland, Associate Justice Sims and Associate Justice Davis.

**C016570      GHOSH v. LEWIS III et al.**

Cause called. Verne A. Perry argued for appellant. David N. Buffington argued for respondents. Mr. Perry and Mr. Buffington were ordered by the Court to provide in writing the status of the bankruptcy case by October 31, 2001. Cause deferred.

At 11:00 a.m., the court recessed until 9:30 a.m., Tuesday, October 16, 2001.

**C031486      THE PEOPLE v. CURRY      (Not for Publication)**

The judgment is affirmed. The trial court is directed to prepare a corrected order of probation, stating the weapon condition of probation as follows: "Defendant shall not own or possess any dangerous or deadly weapons nor remain in any building or vehicle where any person has such a weapon, nor remain in the presence of any unlawfully armed person."

SCOTLAND, P.J.

We concur: Morrison, J.  
Kolkey, J.

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- C034138      THE PEOPLE v. FULTON      (Not for Publication)**  
The sentence is modified to stay the three-year term imposed on count IV. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment properly reflecting the sentence as modified and deliver it to the Department of Corrections.  
NICHOLSON, Acting P.J.  
We concur: Morrison, J.  
Callahan, J.
- C034270      THE PEOPLE v. TORRES      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, J.  
We concur: Scotland, P.J.  
Morrison, J.
- C035146      THE PEOPLE v. JOHNSON III      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, J.  
We concur: Scotland, P.J.  
Morrison, J.
- C035900      THE PEOPLE v. MARLEN      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, J.  
We concur: Scotland, P.J.  
Morrison, J.
- C036338      THE PEOPLE v. SCHNEPP      (Not for Publication)**  
The judgment is affirmed.  
DAVIS, J.  
We concur: Scotland, P.J.  
Callahan, J.
- C037995      THE PEOPLE v. CLARK      (Not for Publication)**  
The judgment is affirmed.  
DAVIS, J.  
We concur: Scotland, P.J.  
Morrison, J.
- C038385      THE PEOPLE v. WITBECK      (Not for Publication)**  
The judgment is affirmed.  
DAVIS, J.  
We concur: Scotland, P.J.  
Nicholson, J.

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- C038441      THE PEOPLE v. SIMMS      (Not for Publication)**  
The judgment is affirmed.  
   NICHOLSON, J.  
We concur:      Scotland, P.J.  
   Davis, J.
- C036389      ANDRIOLA v. STATE OF CALIFORNIA et al.      (Not for Publication)**  
The judgment is affirmed. Defendants shall receive their costs on appeal.  
   SIMS, J.  
We concur:      Scotland, P.J.  
   Raye, J.
- C036849      CALFARM v. HAAS      (Not for Publication)**  
The judgment is affirmed. CalFarm shall recover its costs on appeal.  
   SIMS, Acting P.J.  
We concur:      Morrison, J.  
   Kolkey, J.
- C036582      In re GINA B. et al; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. RAYMOND B.      (Not for Publication)**  
The orders of the juvenile court regarding the supplemental petition are vacated and the matter is remanded for the juvenile court to order DHHS to comply promptly with the notice provisions of the Act. If, after proper inquiry and notice, no response is received or the tribes or the BIA determine the minors are not Indian children, all previous orders shall be reinstated. If the BIA or a tribe determines the minors are Indian children, or if other information is presented to the juvenile court that affirmatively suggests the minors are Indian children as defined by the Act, the juvenile court is ordered to conduct a new hearing on the supplemental petition in conformity with all provisions of the Act.  
   NICHOLSON, J.  
We concur:      Scotland, P.J.  
   Morrison, J.
- C036747      In re JEFFREY W.; TEHAMA COUNTY DEPARTMENT OF SOCIAL SERVICES v. JEFFREY W.      (Not for Publication)**  
The order of the juvenile court is affirmed.  
   NICHOLSON, J.  
We concur:      Scotland, P.J.  
   Sims, J.

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At 9:33 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Scotland, Presiding Justice; Davis, Associate Justice; Nicholson, Associate Justice; and Rios, Bailiff. Calendar Called.

**C034873      HUSTON v. CITY OF YREKA**

Cause called. James J. Johnson argued for appellant. William D. Ayres argued for respondent. Cause submitted.

At 9:50 a.m., the court recessed. At 9:55 a.m., the court reconvened with Presiding Justice Scotland, Associate Justice Davis and Associate Justice Morrison.

**C036222      LEARSON, etc., et al v. CARLOMANGO PACLIBAR et al.**

Cause called. Glenn S. Guenard argued for appellants. Domenic D. Spinelli argued for respondents. Cause submitted.

At 10:15 a.m., the court recessed. At 10:18 a.m., the court reconvened with Acting Presiding Justice Morrison, Associate Justice Callahan and Associate Justice Hull.

**C034163      DEPARTMENT OF HEALTH SERVICES v. THE SUPERIOR COURT OF  
SACRAMENTO COUNTY and MCGINNIS**

Cause called. Barbara A. Morris, Deputy Attorney General, argued for petitioner. William C. Quackenbush argued for real party in interest. Cause submitted.

At 10:45 a.m., the court recessed. At 10:50 a.m., the court reconvened with Acting Presiding Justice Sims, Associate Justice Davis and Associate Justice Raye.

**C035975      OATES v. CITY OF LINCOLN et al.**

Cause called. Edward R. Brenner argued for appellant. Harriet A. Steiner argued for respondents. Ethan Walsh appeared only. Cause submitted.

At 11:10 a.m., the court recessed. At 2:00 p.m., the court reconvened with Acting Presiding Justice Morrison, Associate Justice Hull and Associate Justice Kolkey.

**C031367      ARDEN CARMICHAEL, INC., et al. v. COUNTY OF SACRAMENTO**

Cause called. Brendon T. Ishikawa argued for appellants and submitted additional citations. Elaine P. DiPietro, Deputy County Counsel, argued for respondent. Cause submitted.

At 2:38 p.m., the court recessed. At 2:40 p.m., the court reconvened with Acting Presiding Justice Raye, Associate Justice Hull and Associate Justice Kolkey.

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**C035334      MIKELBANK v. SACRAMENTO COUNTY EMPLOYEES' RETIREMENT BOARD**

Cause called. Peter H. Smurr argued for appellant. Timothy D. Weinland, Deputy County Counsel, argued for respondent. Cause submitted.

At 3:07 p.m., the court recessed until 9:30 a.m., Wednesday, October 17, 2001.

**C033662      THE PEOPLE v. SPEAR      (Not for Publication)**

We remand for a recalculation of defendant's sentence consistent with our views stated herein. In all other respects, the judgment is affirmed.

RAYE, Acting P.J.

We concur: Morrison, J.  
Kolkey, J.

**C038257      THE PEOPLE v. ROOT      (Not for Publication)**

The judgment is affirmed.

RAYE, J.

We concur: Scotland, P.J.  
Morrison, J.

**C037222      In re ADAM R.; THE PEOPLE v. ADAM R. (Not for Publication)**

The judgment is affirmed.

SIMS, Acting P.J.

We concur: Callahan, J.  
Hull, J.

**C038333      In re MAX H.; SHASTA COUNTY DEPARTMENT OF SOCIAL SERVICES v. RONALD H.      (Not for Publication)**

The orders of the juvenile court are affirmed.

RAYE, J.

We concur: Scotland, P.J.  
Morrison, J.

**October 17, 2001**

At 9:28 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Sims, Acting Presiding Justice; Callahan, Associate Justice; Hull, Associate Justice; and Castillo, Bailiff. Calendar Called.

**C034335      THE PEOPLE v. MASON, JR.**

Cause called. Philip M. Brooks, court appointed counsel, argued for appellant. Alan Ashby, Deputy Attorney General, argued for respondent. Cause submitted.

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At 9:42 a.m., the court recessed. At 9:46 a.m., the court reconvened with Acting Presiding Justice Sims, Associate Justice Davis and Associate Justice Raye.

**C035572**

**SCHMID v. DEPARTMENT OF TRANSPORTATION**

Cause called. Frear Stephen Schmid argued for appellant. O.J. Solander, Department of Transportation, argued for respondent. Yvonne von Brauchitsch appeared only. Cause submitted.

At 10:09 a.m., the court recessed. At 10:13 a.m., the court reconvened with Acting Presiding Justice Sims, Associate Justice Davis and Associate Justice Morrison.

**C036553**

**MERAZ v. CITY OF SACRAMENTO CIVIL SERVICE BOARD**

Cause called. Michael Meraz argued for himself in pro per as appellant. Marcos A. Kropf, Deputy City Attorney, argued for respondent. Cause submitted.

At 10:37 a.m., the court recessed. At 10:41 a.m., the court reconvened with Acting Presiding Justice Sims, Associate Justice Davis and Associate Justice Morrison.

**C036879**

**PONCIANO v. POTTS**

Cause called. Peter J. Godfrey argued for appellant. Michael T. Shepherd argued for respondent. Cause submitted.

At 10:51 a.m., the court recessed. At 10:54 a.m., the court reconvened with Acting Presiding Justice Davis, Associate Justice Raye and Associate Justice Morrison.

**C036253**

**WASZCZUK v. DESTEC ENERGY, INC.**

Cause called. Jaroslaw Waszczuk argued for himself in pro per as appellant. C. Robert Sturm argued for respondent. Cause submitted.

At 11:03 a.m., the court recessed. At 1:58 p.m., the court reconvened with Acting Presiding Justice Sims, Associate Justice Raye and Associate Justice Morrison.

**C035486**

**CITY OF OAKLAND v. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, et al. and UNITED PUBLIC EMPLOYEES LOCAL 790 etc.**

Cause called. Richard B. Maness, Public Employees' Retirement System, argued for appellants. W. Daniel Boone argued for real party in interest. Cynthia O'Neill argued for respondent. Cause submitted.

At 2:39 p.m., the court recessed. At 2:46 p.m., the court reconvened with Presiding Justice Scotland, Associate Justice Sims and Associate Justice Davis.

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**October 17, 2001, continued**

At 3:18 p.m., the court recessed. At 3:22 p.m., the court reconvened with Acting Presiding Justice Raye, Associate Justice Callahan and Associate Justice Hull.

At 3:48 p.m., the court recessed until 9:30 a.m., Friday, October 19, 2001.

The judgment is affirmed.  
NICHOLSON, J.  
We concur: Blease, Acting P.J.  
Raye, J.

We concur: NICHOLSON, J.  
Blease, Acting P.J.  
Raye, J.

We concur: NICHOLSON, J.  
Blease, Acting P.J.  
Raye, J.

We concur: NICHOLSON, J.  
Blease, Acting P.J.  
Sims. J.

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**C038157      THE PEOPLE v. FALCONER      (Not for Publication)**

The judgment is affirmed.

SIMS, J.

We concur:    Blease, Acting P.J.  
                  Nicholson, J.

**C038196      THE PEOPLE v. EASLEY      (Not for Publication)**

**C038205**      The judgments are affirmed.

RAYE, J.

We concur:    Scotland, P.J.  
                  Morrison, J.

**C035510      FELLER v. STATE BOARD OF FORESTRY      (Not for Publication)**

THE COURT:

It is ordered that the opinion of Justice Sims filed herein on September 18, 2001, be modified in the following respects:...There is no change in the judgment. The Petition for rehearing is denied.

BY THE COURT:

SIMS, Acting P.J.

Morrison, J.

Hull, J.

**October 18, 2001**

**C036616      THE PEOPLE v. POWASER      (Not for Publication)**

The judgment (order granting probation) is reversed and the matter is remanded to the trial court. The trial court is directed to vacate the finding of a felony violation on count five; engaging in sexual contact with a patient or client, and to find defendant guilty of a misdemeanor violation of Business and Professions Code section 729, subdivision (a). The trial court is further directed to vacate the finding of a felony violation of count four, sexual battery by restraint (Pen. Code, § 243.4, subd. (a)).

The trial court shall reduce the offense of sexual battery by restraint (count 4) to the offense of misdemeanor sexual battery (§ 243.4, subd. (d)), unless within 30 days of the filing of the remittitur in the trial court, the People elect to retry the defendant in conformity with the opinion.

BLEASE, Acting P.J.

We concur:    Sims, J.  
                  Davis, J.



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**The Minutes**

**October 18, 2001, continued**

- C036911      THE PEOPLE v. FERGUSON      (Certified for Publication)**  
The judgement is affirmed. (CERTIFIED FOR PUBLICATION.)  
                         MORRISON, J.  
We concur:    Blease, Acting P.J.  
                         Raye, J.
- C038162      THE PEOPLE v. MORENO, JR.      (Not for Publication)**  
The judgment is affirmed.  
                         SIMS, J.  
We concur:    Blease, Acting P.J.  
                         Nicholson, J.
- C034937      LSB INTERNATIONAL, INC. v. MOHAWK VALLEY RANCH, INC. et al.      (Not for Publication)**  
The judgment is affirmed.  
                         MORRISON, J.  
We concur:    Blease, Acting P.J.  
                         Hull, J.
- C035416      COOLEY, JR. v. COUNTERPART CAPITAL CORPORATION et al.      (Not for Publication)**  
The order denying the petition to compel arbitration and to stay or sever the remaining causes of action is affirmed.  
                         DAVIS, J.  
We concur:    Sims, Acting P.J.  
                         Morrison, J.
- C037600      PEPPER v. PEPPER      (Not for Publication)**  
The judgment is affirmed, each side to bear its own costs.  
                         BLEASE, Acting P.J.  
We concur:    Nicholson, J.  
                         Raye, J.
- C037662      In re JAMES M.; SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY v. JAMES M.      (Not for Publication)**  
The order of the juvenile court is affirmed.  
                         DAVIS, J.  
We concur:    Scotland, P.J.  
                         Morrison, J.

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**October 19, 2001**

At 9:30 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Blease, Acting Presiding Justice; Morrison, Associate Justice; Callahan, Associate Justice; and Rios, Bailiff. Calendar Called.

**C036346      STATE BOARD OF EQUALIZATION v. WIRICK**

Cause called. Robert D. Swanson argued for appellant. Molly K. Mosley, Deputy Attorney General, argued for respondent. Cause submitted.

**C036767      THARP v. BLACK, III et al.**

Cause called. John J. Hartford argued for appellant. Risé A. Donlon argued for respondents. Cause submitted.

At 10:19 a.m., the court recessed. At 10:24 a.m., the court reconvened with Acting Presiding Justice Blease, Associate Justice Davis and Associate Justice Nicholson.

**C037013      FINCH v. SOUTHWEST AIRLINES COMPANY**

Cause called. Clay Robbins, III argued for appellant. James P. Johnson argued for respondent. Cause submitted.

At 11:02 a.m., the court recessed. At 2:02 p.m., the court reconvened with Acting Presiding Justice Blease, Associate Justice Sims and Associate Justice Davis.

**C032962      STEINER v. STEINER**

**C036293** Cause called. Greg Steiner argued for himself in pro per as appellant.

**C036305** Bradley S. Thomas argued for respondent. Cause submitted.

**C036306**

At 2:20 p.m., the court recessed. At 2:24 p.m., the court reconvened with Acting Presiding Justice Blease, Associate Justice Sims and Associate Justice Raye.

**C037241      WICHMANN v. LIVINGSTON & MATTESICH LAW CORPORATION et al.**

Cause called. S. Craig Hunter argued for appellants and submitted additional citations. Klaus John Kolb argued for respondent. Cause submitted.

At 2:55 p.m., the court recessed. At 2:56 p.m., the court reconvened with Acting Presiding Justice Blease, Associate Justice Nicholson and Associate Justice Raye.

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**October 19, 2001, continued**

**C037842      THE PEOPLE v. MITCHELL**  
Cause called. David Andrew Eldridge, Deputy Attorney General, argued for appellant. J. Peter Axelrod, court appointed counsel, argued for respondent. Cause submitted.

At 3:32 p.m., the court recessed until 9:30 a.m., Monday, October 22, 2001.

**C033220      THE PEOPLE v. THOMAS II      (Not for Publication)**  
The judgment is affirmed.  
                        BLEASE, Acting P.J.  
We concur: Hull, J.  
                        Kolkey, J.

**C034051      THE PEOPLE v. ROBLES      (Not for Publication)**  
The judgment is affirmed.  
                        RAYE, J.  
We concur: Blease, Acting P.J.  
                        Kolkey, J.

**C035986      THE PEOPLE v. BOYD, JR.      (Not for Publication)**  
The judgment is affirmed.  
                        DAVIS, Acting P.J.  
We concur: Morrison, J.  
                        Callahan, J.

**C036851      THE PEOPLE v. PIPER      (Not for Publication)**  
The judgment is affirmed.  
                        NICHOLSON, J.  
We concur: Scotland, P.J.  
                        Callahan, J.